Calendar No. 466

97TH CONGRESS
2d Session

SENATE

REPORT
No. 97-327

NATIONAL NUCLEAR WASTE POLICY ACT OF 1981

MARCH 25 (legislative day, FEBRUARY 22), 1982.—Ordered to be printed

Mr. WARNER, from the Committee on Armed Services, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 1662]

The Committee on Armed Services, to which was referred the bill (S. 1662) to establish a limited program for Federal storage of spent fuel from civilian nuclear powerplants, to set forth a Federal policy, initiate a program, and establish a national schedule for the disposal of nuclear waste from civilian activities, and for other purposes, for the purpose of permitting the committee to review section 202, 203, and title VIII of the Environment and Public Works version of the bill, section 202 of the Energy and Natural Resources version of the bill, and the applicability of title VII of the Energy and Natural Resources and Environment and Public Works versions of the bill to a licensed respository or monitored, retrievable storage facility for radioactive waste from atomic energy defense activities, having considered the matters referred to it, reports thereon with amendments and recommends that the amendments of the committee be agreed to.

BACKGROUND

On November 30, 1981, the Committees on Energy and Natural Resources and Environment and Public Works reported S. 1662, the National Nuclear Waste Policy Act.

On March 8, 1982, the bill was sequentially referred to the Committee on Armed Services for the consideration of certain provisions relating to defense nuclear waste. The text of the unanimous consent request making that sequential referral follows:

89-010 O

S203-1

JOINT REFERRAL—S. 1662

Mr. BAKER. Mr. President, this request, I believe, has been cleared on both sides.

Mr. President, I ask unanimous consent that Calendar No. 393, S. 1662, the National Nuclear Waste Policy Act of 1981, be referred to the Committee on Armed Services for the purpose of permitting the committee to review the following provisions of the bill: section 202, section 203, and title VIII of the "Environment and Public Works" version of the bill; section 202 of the "Energy and Natural Resources" version of the bill; and the applicability of title VII of the "Energy and Natural Resources and Environment and Public Works" versions of the bill to a licensed repository or monitored, retrievable storage facility for radioactive waste from atomic energy defense activities.

I further ask unanimous consent that the Committee on Armed Services be obligated to report the bill by March 25, 1982, or be discharged from further consideration thereof.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUMMARY OF COMMITTEE ACTION

The bill was assigned to the Armed Services Subcommittee on Strategic and Theater Nuclear Forces for consideration. On March 18, 1982, the Subcommittee held hearings on those provisions of S. 1662 that had been referred to the Committee. Testimony was heard from the Honorable W. Kenneth Davis, Deputy Secretary, Department of Energy, Mr. Herman Roser, Assistant Secretary of Energy for Defense Programs, and Dr. Shelby Brewer, Assistant Secretary of Energy for Nuclear Energy.

The Subcommittee met on March 23, 1982 to develop markup recommendations for consideration by the Full Committee. On March 25, 1982 the Senate Armed Services Committee, by a vote of 13 to 2, recommended that the bill be reported with the amendments described herein.

COMMITTEE AMENDMENTS

In the version of the bill as reported by the Committee on Energy and Natural Resources, strike subsection 202(b) and 202(c).

In the version of the bill as reported by the Committee on Environment and Public Works, strike subsection 202(b) and Title VIII, and revise Section 203 to read as follows:

"At the end of Section 55 of the Atomic Energy Act of 1954, add the following sentence: 'Before any action is taken under this section to purchase, take, requisition, condemn, or acquire special nuclear material from the commercial sector for use for defense purposes, the President shall certify to the Congress that such action is vital to the national security interests of the United States.'"

GENERAL COMMENTS ON THE NUCLEAR WASTE ISSUE

The general public holds many misconceptions about nuclear waste. Many anti-nuclear groups have seized on the nuclear waste issue and

have attempted to inflame public sentiment against both nuclear power and nuclear arms, arguing that nuclear waste is an insidious, unmanageable byproduct of nuclear programs that may cause widespread suffering and death. These groups have been remarkably successful in throwing up regulatory and procedural roadblocks in the path of orderly and safe long-term solutions to the nuclear waste issue.

Nuclear waste is hazardous and must be handled with extreme concern for public health and safety; however, long-term solutions to the handling of nuclear waste are at hand. The technology exists with which to safely process, package and store nuclear wastes for the indefinite future. The Federal Government has failed in its responsibility to the American people to put the issue of nuclear waste to rest. The committee applauds the work of the Committee on Energy and Natural Resources and Environment and Public Works in bringing S. 1662, the National Nuclear Waste Policy Act, to the Senate. It charts a definitive, prudent course for the permanent handling of commercial nuclear waste that is long overdue. This bill will be an imporant milestone in fostering our energy security—a vital component of our overall national security.

Nuclear wastes generated by atomic energy defense activities are significantly different than wastes from commercial powerplants. Defense wastes are predominantly in the form of liquid and associated solids stored in special tanks under secure conditions at federally controlled sites; the volume is large, but the radioactive hazard is comparatively low. Commercial wastes are predominantly in the form of spent fuel stored at the various reactor sites; the question of whether or not spent fuel will be reprocessed complicates the commercial waste problem. These two distinctly different nuclear waste forms constitute two different technological problems that are best addressed in two separate, but complementary programs. S. 1662 should address the commercial waste problem; the defense waste problems should be addressed separately. The committee intends to consider a separate bill on defense nuclear waste expeditiously.

There is in existence a program to handle the issue of the long-term storage of defense nuclear waste. In fact, this program is well along toward demonstrating the technical feasibility of solutions to the remaining unanswered questions. With regard to high level nuclear waste, pilot facilities at both the Savannah River Plant in South Carolina and Richland, Wash., have shown that wastes now stored in tanks can be extracted, embedded in a glass matrix and encased in steel containers. The design and construction of a full-scale facility to process and immobilize waste is underway at the Savannah River Plant. Work is well along on the Waste Isolation Pilot Plant in New Mexico. This is a pilot facility to demonstrate that transuranic waste and processed high level waste can be safely stored in a bedded salt geologic repository. Recent expenditures for defense nuclear waste have totalled several hundred million dollars each year and the budget request for FY–1983 is in excess of $500 million.

Section-by-Section Analysis

Subsection 202(b) is essentially the same in both bill versions and requires that the provisions of Title VII, concerning State participation in the development of nuclear waste repositories, would apply to

any repository for defense wastes if such repository is required to be licensed by the Nuclear Regulatory Commission. Administration officials testified in opposition to this provision. The Committee feels strongly that States should have a full and active partnership with the Government in developing any defense waste repository consistent with national security considerations; in fact, the State of New Mexico's role in consultation and cooperation on the Waste Isolation Pilot Plant project was landmark legislation that was developed and recommended by this Committee. However, in view of the position of the Administration that this bill would be more viable if stripped of its defense waste provisions, the Committee recommends that the provision be dropped from S. 1662.

Subsection 202(c) in the bill, as reported by the Committee on Energy and Natural Resources, precludes the use of a commercial waste repository for storing any defense waste. Conversely, Subsection 801(c) of the bill, as reported by the Committee on Environment and Public Works, requires that defense wastes be placed in a commercial waste repository, unless the President determines that national security needs dictate the development of a defense waste only repository. The issue of whether or not to commingle commercial and defense wastes in the same repository cannot be settled at this point because criteria for both the waste forms and the repository have not been developed. Administration officials testified that they would prefer to keep their options open at this point and the Committee agrees. It is indeed premature at this point in time to either prohibit commingling or to mandate commingling. The Committee will certainly support the lowest cost option that is consistent with national security considerations, but the facts are not available upon which to make an informed choice.

Section 203 of the bill, as reported by the Committee on Environment and Public Works, adds a new subsection (e) to Section 57 of the Atomic Energy Act that would prohibit special nuclear material produced in the commercial sector from being used for nuclear explosive purposes. The Committee supports the Administration in opposition to this section.

Since the first commercial power reactor began producing electricity in 1957, the United States has carefully and deliberately maintained a clear distinction between its commercial and its military nuclear programs. This has been done as a matter of national policy without the necessity for a legislative mandate to do so. There are no plans at this time to use any commercial nuclear products in any defense program. However, the United States has always kept available the option to use commercial nuclear facilities and products for military purposes, should our national security interests so dictate. This option was carefully preserved when the United States signed the Nuclear Nonproliferation Treaty. In view of the foregoing, the Committee can se no reason to enact this legislation at this point in time; to the contrary, the perception of this legislation by our allies, our potential adversaries and the Third World may well be that the United States is foregoing yet another vital national security option—unilaterally and unnecessarily.

There is serious question as to what impact, if any, that this historic separation has had on the proliferation question. Of the nuclear

weapons' states that signed the Nuclear Nonproliferation Treaty, only the United States and the United Kingdom have totally separate military and civilian nuclear programs. Emerging nuclear weapons' states appear driven by economic and other considerations to combine their military and commerical nuclear programs.

In opposing this provision, the Committee is not supporting, endorsing or encouraging the use of commercial nuclear facilities and products for military purposes. The Committee respects the historical separation of civilian and military nuclear programs. The Committee believes that the use of commercial nuclear facilities or products should be used for defense purposes only as a last resort and that the Administration should make plans to continue to supply necessary special nuclear materials for defense purposes from reactors and processing facilities dedicated to that purpose.

To reinforce its view that commercial nuclear facilities or products should not be used except in the interest of national security, the Committee recommends that Section 55 of the Atomic Energy Act of 1954, which is the authority for the Energy Department to use commercial nuclear facilities or products for any purpose, be amended to require Presidential certification as to the national security need before such use is made.

Title VIII of the bill, as reported by the Committee on Environment and Public Works, mandates a study on defense nuclear waste. Subsections 801(a) and (b) are essentially a duplicate of Section 213 of Public Law 97–90 except that the required reporting date is January 1, 1983 in this bill versus July 1, 1983 in Public Law 97–90. The Committee sees no need to duplicate this provision. Subsection 801(c) requires commingling of defense and commercial wastes in a single repository and has been discussed previously. Subsection 801(d) directs that if the President determines that a defense only repository is appropriate, such repository shall be developed as if it were a commercial repository. The Committee considers such requirements premature and believes that they should not be imposed at this time.

Budget Estimate

The changes recommended by the Committee will have no budgetary impact.

Regulatory Impact

Paragraph 5 of rule XXIX of the Standing Rules of the Senate requires that a report of the regulatory impact of a bill be included in the report on such bill. The Committee finds that in the case of the amendments recommended on this bill there is no regulatory impact.

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing laws proposed to be made by the bill are shown as follows: new matter is printed in italic and existing law in which no change is proposed is shown in roman.

ATOMIC ENERGY ACT OF 1954 (68 STAT. 919; 42 U.S.C. 2011 ET SEQ.)

* * * * * * *

SEC. 55. ACQUISITION.—The Commission is authorized, to the extent it deems necessary to effectuate the provisions of this Act, to purchase without regard to the limitations in section 54 or any guaranteed purchase prices established pursuant to section 56, and to take requisition, condemn, or otherwise acquire any special nuclear material or any interest therein. Any contract of purchase made under this section may be made without regard to the provisions of section 3709 of the Revised Statutes, as amended, upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonably practicable. Partial and advance payments may be made under contracts for such purposes. Just compensation shall be made for any right, property, or interest in property taken, requisitioned, or condemned under this section. *Providing*, That the authority in this section to commit United States funds for any activities pursuant to any subsequent arrangement under section 131a.(2)(E) shall be subject to the requirements of section 131. *Before any action is taken under this section to purchase, take, requisition, condemn, or acquire special nuclear material from the commercial sector for use for defense purposes, the President shall certify to the Congress that such action is vital to the national security interests of the United States.*

* * * * * * *

POSITION OF THE ADMINISTRATION

The position of the Administration is reflected in the attached statement of the Honorable W. Kenneth Davis, Deputy Secretary of Energy.

STATEMENT OF W. KENNETH DAVIS, DEPUTY SECRETARY, U.S. DEPARTMENT OF ENERGY BEFORE THE COMMITTEE ON ARMED SERVICES, UNITED STATES SENATE, MARCH 18, 1982

I am pleased to be here today to discuss waste management legislation. I am accompanied by Mr. Roser, Assistant Secretary for Defense Programs, and Dr. Brewer, Assistant Secretary for Nuclear Energy. At this time, I would like to comment on the administration's position on the provisions in this bill which address defense high-level waste disposal.

The Department of Energy believes that legislation addressing the disposal of commercially generated high-level waste is important to the nuclear energy option. Several provisions in S. 1662, such as the establishment of a fee system to finance the construction of repositories, and the establishment of Federal-State relationships in repository siting decisions, are essential to a successful civilian nuclear waste program. Section 202(a) effectively limits S. 1662 to civilian

waste activities. Other provisions, however, address defense waste matters and should not be considered as part of this legislation.

For example, prohibiting disposal of defense wastes in a commerical repository and legally excluding use of commercial spent fuel in weapons programs should be considered in a separate bill, if Congress decides to act in this area. The Department believes that these issues should not be addressed in S. 1662 or in any legislation covering the shipment, storage, or disposal of commercially generated high-level waste and spent fuel.

The administration is opposed to legislatively foreclosing the option of disposing of defense wastes in a commercial repository as in section 202.C of the Energy Committee's version of the bill. It is premature to make such a determination. If national defense or security programs are not jeopardized, it might be appropriate to utilize a commercial repository with payment of disposal charges.

The DOE believes that the provisions of section 203 impose an unnecessary restriction on potential options that could be needed in the future. Given the importance of maintaining a clear distinction between peaceful and defense uses of nuclear energy, as well as the serious domestic and nonproliferation implications, the option of using civilian plutonium for defense purposes would only be considered if clearly essential for national security. Such an action would have to be approved at the highest level of Government, and the views of Congress would be sought and weighed in making a decision. The provisions of section 203 are, therefore, premature and would unilaterally restrict United States defense options compared to our potential adversaries.

At some point there might be a need to shift certain facilities and materials from the commercial to the defense sector. This consideration was specifically included in the Atomic Energy Act of 1954. The proposed section 203 amendment would foreclose this option. Under existing international agreements, the United States, as a weapons state, has the right to shift facilities and materials from the commercial to the defense sector. The United States agreement with the International Atomic Energy Agency (IAEA), provides the explicit right for the United States to remove safeguards requirements and shift facilities and materials to the defense sector if there is a national security need. All other nuclear weapons states which have agreed to IAEA safeguards have preserved similar flexibility, e.g., France and the United Kingdom.

Sections 801(a) and (b) of the Committee on Environmental and Public Works version of the bill require the submission by June 1983 of a report similar to the report required by Public Law 97–90. This section, therefore, duplicates existing legislation. Section 801 (c) and (d) require that DOE analyze by January 31, 1983, the utility of disposing of high-

level waste from atomic energy defense activities in a commercial repository. The Department believes that such analysis should be addressed in the course of responding to Public Law 97–90.

Section 201(10) of the Environment and Public Works version defines a high-level waste as any solid or liquid high-level waste from defense activities. This would include a large volume of very low-activity residues from high-level waste solidification and could increase disposal costs unnecessarily. EPA is now developing a new definition of high-level waste related to the actual hazard of the waste rather than only its source. Section 201(10) should, therefore, defer to EPA's definition in 40 CFR 191.

In summary, sections 202.C and 203, application of title VII to defense activities, and title VIII, should not be included in S. 1662 and section 201(10) should be modified as proposed.

This concludes my statement. I will be glad to answer any questions you have at this time.

ADDITIONAL VIEW BY SENATOR JACKSON

I believe that we must give the States an opportunity to fully participate in the decision process for both civilian and defense waste repositories. The public does not make a distinction between the two types of wastes, even though there are important technical distinctions that can be made. I have spent a great deal of time on this issue dating back almost 5 years when the Carter Administration first proposed putting civilian waste into the WIPP facility. I believe that the general formulation contained in S. 1662 provides adequate protections for states in protecting the public health and safety of their citizens related to the construction and operation of nuclear waste repositories.

I applaud Senator Warner's announced intention to introduce and to act on legislation for the defense wastes, and I will work with him to try to see that such legislation is enacted. I am concerned, however, that limiting the applicability of Title VII of S. 1662 only to civilian nuclear waste will call into question our commitment to allowing states to participate in the process of establishment and operation of defense waste repositories. I believe it is essential that we not create that impression in the public's mind, and I know that is not the intent of Senator Warner in proposing to limit Title VII to only civilian nuclear waste repositories.

Given my knowledge of his intent to enact a defense waste policy, I did not oppose his proposed amendment striking Section 202(b) from S. 1662 in this Committee's markup. However, I reserve my option on the Senate Floor to support the Energy Committee's approach to this matter where my previous actions supported equal treatment for State participation in civilian and defense waste repositories. It could very well be that legislation for defense wastes would be ready for Floor action in the same time period of consideration of S. 1662. In fact, given the contentions surrounding S. 1662, legislation on defense waste policy may even precede consideration of civilian nuclear waste legislation of the Senate Floor. Based upon the progress being made in enacting defense waste policy, I may support, at the time of Floor consideration of S. 1662, the Armed Services Committee position of limiting Title VII to civilian repositories, if that action might increase the chances of enacting civilian nuclear waste policy in this Congress as well, given the jurisdiction probems in the House of Representatives.

HENRY JACKSON.

○